IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 760 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAICHANDJI BHAYAJI THAKORE

Versus

JILLA COLLECTOR OF AHMEDABAD

Appearance:

MR ASHOK R SHAH for Petitioner

MR SJ DAVE, AGP for Respondent NoS. 1, 2, 3

CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE C.K.BUCH

Date of decision: 28/03/2000

ORAL JUDGEMENT (PER : M.H.KADRI, J)

The petitioner, by filing this petition under

Article 226 of the Constitution of India, has prayed to issue a writ or a direction commanding the respondents to make inquiry as to the market value of the acquired land of the petitioner of survey no.36/1 of village Fatehwadi, Ta: Dascroi, Sub-District : Ahmedabad admeasuring about 2009 sq.mts. which came to be acquired for Fatehwadi Canal. The petitioner has further prayed to issue a writ or a direction to the respondents to make payment of amount of compensation of the acquired land.

It is not in dispute that the petitioner's land bearing survey no. 36/1 admeasuring about 2009 sq.mts., came to be acquired for the public purpose of Fatehwadi Canal. It is the petitioner's case that the land in question was acquired in the year 1975 and possession thereof was taken in the year 1976, but still the petitioner is not paid amount of compensation of the acquired land. It is alleged by the petitioner that he had made several representations and had, in fact, written several letters right from the year 1975 till the year 1998- prior to filing of this petition, asking the respondent no.1 to make payment of amount of compensation of the acquired land. It is alleged that as respondent no.1 did not pay any attention to the requests made by the petitioner, he was compelled to file this petition for the reliefs as mentioned above.

Respondent No.2 Deputy Executive Engineer, Vasana Barrage Sub Division, has filed his affidavit-in reply, inter alia, contending that the award of the acquired land of the petitioner was made by the Land Acq. Officer under Sec.11 of the Act on 19th March, 1975. It is averred that the land admeasuring 1966 sq.mts. of survey No. 36/1 was acquired for the purpose of construction of Fatehwadi Canal. It is further averred that the Land Acq.Officer had declared his award under sec.11(2) of the Land Acquisition Act, 1894 (tobe referred to as the "Act" for short) on 19th March, 1975 after following the procedure prescribed under the Act.

The petitioner has filed his affidavit-in -rejoinder, inter alia, contending that no amount of compensation was paid to him by the Land Acq.Officer for the acquired land. In support of the above contention of the petitioner, affidavit of a third party namely Mohanji Javarji Thakore is also filed. Land of the deponent Mohanji was also acquired which was bearing survey no.40 admeasuring about 1239 sq.mts. The deponent was paid compensation of Rs. 21,737-42 ps. Another affidavit of a third party namely Prahladji Lalluji Thakore is also filed by the petitioner in support of his contention. Other land owners whose lands came to be acquired, were paid amount of compensation, whereas the petitioner was

not paid compensation of his acquired land.

Affidavit filed on behalf of the respondents does not indicate that the petitioner was paid amount of compensation as per award of the Land Acq.Officer made on 19th March, 1975. A lame excuse has been made out by the respondents that record of the Land Acq.Officer was not available and it was difficult for the Land Acq. Officer to find out whether amount of compensation was paid to the petitioner or not. Zerox copy of the letter of the District Treasury Officer dated 24th March, 2000 was produced by the respondents, which was taken on the record of this petition, wherein it has been stated that the record of the year 1975 was destroyed as per the Rules & Regulations and, therefore, no information can be supplied whether amount of compensation was paid to the petitioner or not. This being the sorry state of affairs on the part of the respondents, we are of the opinion that the record does not indicate that the petitioner was paid amount of compensation for his acquired land of survey no.36/1. Counsel for the respondents has tried to urge that there is gross delay in filing present petition as the award of the Collector was made in the year 1975 whereas the present petition is filed in the year 1998. We do not find any merits in the above submission as the petitioner was all the time right from the year 1975, was requesting the Collector, Ahmedabad to pay him amount of compensation, but his request was not acceded to and ultimately he had to approach this Court by filing present petition.

In view of the facts and circumstances emerging as stated above, we direct that the respondents shall pay amount of compensation of Rs. 1130-00 to the petitioner for his acquired land bearing survey no.36/1 situated at village Fatehwadi with interest at the rate of 6% p.a. from the date of taking over possession till the realisation, within 12 (twelve) weeks from the date of receipt of writ of this order.

Rule is made absolute accordingly with no order as to costs.

28.3.2000 [M.H.KADRI, J]

[C.K. BUCH, J]

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